

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
 . Detroit, Michigan
 . April 28, 2014
Debtor. . 10:01 a.m.
.

HEARING RE. (#3954) COURT'S RULING ON MATTER TAKEN UNDER
ADVISEMENT RE. JOINT MOTION TO AMEND THE SOLICITATION
PROCEDURES ORDER FILED BY CREDITORS ASSURED GUARANTY
MUNICIPAL CORP., BERKSHIRE HATHAWAY ASSURANCE
CORPORATION, (#3943) CORRECTED MOTION (RELATED
DOCUMENT(S)); (#3932) MOTION FOR ENTRY OF AN ORDER
ESTABLISHING SUPPLEMENTAL PROCEDURES FOR SOLICITATION
AND TABULATION OF VOTES TO ACCEPT OR REJECT PLAN OF
ADJUSTMENT WITH RESPECT TO PENSION AND OPEB CLAIMS FILED
BY DEBTOR IN POSSESSION CITY OF DETROIT, MICHIGAN,
(#4202) HEARING RE. ALL FILED OBJECTIONS TO WRITTEN
DISCOVERY TO BE HELD ON 4/28/2014 AT 10:00 AM,
COURTROOM 100, U.S. COURTHOUSE, 231 W. LAFAYETTE,
DETROIT, MI 48226 (RE: FOURTH AMENDED ORDER
ESTABLISHING PROCEDURES, DEADLINES AND HEARING DATES
RELATING TO THE DEBTOR'S PLAN OF ADJUSTMENT), MATTER
(#4202) HEARING RE: FINAL APPROVAL OF THE DISCLOSURE
STATEMENT (RE. FOURTH AMENDED ORDER ESTABLISHING
PROCEDURES, DEADLINES AND HEARING DATES RELATING TO
THE DEBTOR'S PLAN OF ADJUSTMENT)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: Court is in session. Please be seated.
2 Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: I'd like to start with the hearing on
4 the disclosure statement, please.

5 MR. HEIMAN: Good morning, your Honor. David
6 Heiman, Jones Day, on behalf of the city. More good news
7 today. As everyone knows, we filed our third amended plan of
8 adjustment and disclosure statement on Friday evening. Since
9 the last hearing, we have continued our forward momentum and
10 over the past week have reached additional agreements, most
11 significantly with the Retirees' Committee. So I want -- as
12 I did the last time, I want to be very careful about
13 characterizing agreements that still have some loose ends and
14 on noncore issues. And counsel are here to the extent I
15 overstate anything, so I would welcome any corrections to
16 anything I say, but I'd like to, again, recount for you where
17 we believe we stand as we proceed to confirmation.

18 Again, on the financial creditors' side, we have
19 concluded our discussions or hearings on the swaps as well as
20 the UTGO creditors. The UTGO creditors still require a
21 settlement agreement, which is in the markup stages and I'm
22 confident will be concluded in short order.

23 With respect to the retiree side of the case, we
24 have, I think, set the table for Classes 10, 11, and 12 now,
25 so let me detail that, Class 10 being PFRS. We have

1 agreements with the retirees' association, as we reported
2 last week. That's been converted to a more formal term
3 sheet. We have the agreement with the pension systems, and
4 now we have the agreement on PFRS with the Retirees'
5 Committee.

6 With respect to GRS, we have the agreement with the
7 Retirees Committee, again, with some loose ends still needing
8 to be addressed. We have an agreement with the GRS pension
9 systems also with some loose ends to be addressed. And we
10 have now the affirmation of the coalition of unions,
11 including AFSCME, that has voted to approve the core elements
12 of the deal. So I think we have a -- very much of a
13 consensus building on these important issues. And we also
14 have resolved the OPEB healthcare issues that are found in
15 Class 12 in the plan, and that agreement is with the
16 Retirees' Committee.

17 So, again, I will say we still have some heavy
18 lifting to do, a lot of work to do. Even on those -- in
19 those areas where we've reached agreements, we expect to have
20 sessions this week. It is our hope and expectation that we
21 will file -- subject to your Honor's mandate, we will make
22 corrections, make last-minute changes, and file hopefully the
23 final documents on Friday of this week so that we can stay
24 within the time frame for the Court's scheduled solicitation
25 and confirmation process.

1 If I may take another minute or two, we at the city
2 and on behalf of Kevyn Orr would like to acknowledge certain
3 people and entities because we view this as a momentous
4 occasion as we embark upon what we hope will ultimately be a
5 relatively smooth confirmation process, although we know we
6 still have some areas of disagreement, so I want to first say
7 that all parties that have come to the negotiating table have
8 stretched themselves, including the city. We have all come
9 to find common ground and I believe have found it in a manner
10 that reflects the best interest of all of those parties who
11 have reached agreement. It was not easy. In fact, it was --
12 it sometimes seemed to be impossible, but we are here today
13 with the sun beginning to shine on the City of Detroit and
14 its -- the people who work and live here, so we do think it's
15 a very important step. And, again, I do not want to
16 mischaracterize anything. We have a long process to go
17 through, a lot of work, and it will take some continued
18 persistence to get through this, but we are, I think, much
19 further along than any of us had reason to anticipate, so we
20 are quite pleased by that and want to thank all parties who
21 came to the table in good faith and worked so hard to get
22 here.

23 Also, on behalf of Kevyn Orr and the city, I want to
24 make some acknowledgements about what is clearly
25 unprecedented in these cases. First, I'll start with the

1 charitable foundations, who have, under the leadership of
2 Judge Rosen, stepped up to the plate here in a way that has
3 never happened, as far as we know of, in corporate or
4 nonprofit America, and they have, as the Court knows,
5 committed to fund \$370 million over a period of time. I'd
6 like to thank the DIA, who has also committed to contribute a
7 hundred million dollars, another unprecedented event. And,
8 finally, Governor Snyder and the state -- and, of course,
9 this is subject to legislative approval, so I really need to
10 be careful here, but that the state has agreed to put in a
11 \$350 million sum over 20 years, so all of that adds up to
12 \$820 million without which over a 20-year period, which
13 may -- some of the scheduled payments may change and so
14 forth, but that's the value of what's been put in here.
15 Quite incredible, unprecedented, and all was earmarked for
16 pensions. So it should be clear to everybody in the
17 courtroom and outside the courtroom that we could not have
18 done this or would not have been here today without those
19 commitments.

20 I'd like to thank the mediators. I should first
21 thank your Honor for establishing the mediation process at
22 the outset of these cases. I can attest personally to what
23 is an unbelievable amount of heart and soul that was put into
24 this on a 24-7 basis by Judges Rosen, Roberts, and Eugene
25 Driker dedicated to the retirees as well as Judge Daniel and

1 by Judges Rosen and Perris on the financial creditors' side.
2 And by the way, we still have some mediations to go on the
3 financial creditors' side.

4 So it's -- to use the words of a teenager, it is an
5 awesome position that we're in today, and we're just so
6 thankful to be here and also thankful to your Honor for the
7 strong hand that you have provided in advancing this process
8 swiftly and decisively, and without that I am confident we
9 also wouldn't be here today.

10 With that I'd like -- unless your Honor has any
11 questions, I'd like to turn the proceedings over to Mr.
12 Bennett.

13 THE COURT: Thank you, sir. Before you begin, sir,
14 it occurs to me that I should take advantage of the opening
15 that Mr. Heiman just gave me to comment as well to commend
16 those who have worked as hard as they all have in reaching
17 the settlements that have been reached. I certainly agree
18 with the assessment that it is extraordinary and
19 unprecedented in the history of bankruptcy. At the same time
20 and without minimizing any of that, I, once again, strongly
21 encourage those who are still involved in settlement
22 negotiations and who have not yet achieved settlements to
23 continue to work hard and in good faith to achieve those
24 settlements, and at the same time I, as I did recently,
25 encourage those who will become involved in the regional

1 water authority discussions to pursue those with all vigor
2 and good faith and to follow the example that was previously
3 set by the settlements that are in place. They certainly
4 establish that with hard work and good faith, nothing is
5 impossible. The word just doesn't exist in this case, so
6 they should proceed on the basis that, yes, with the right
7 terms, a regional water authority is in everyone's best
8 interest.

9 MR. BENNETT: Thank you, your Honor. And, as Mr.
10 Heiman said, this entire week I think is devoted to different
11 negotiations with different constituents in an effort to try
12 to achieve additional settlements. It would be great to have
13 a one-day confirmation hearing.

14 Okay. Where we are on the disclosure statement.
15 What was filed on Friday --

16 THE COURT: Well, I have to stop you there because
17 even if everyone settles, as I have said before, the burden
18 will be on you to prove feasibility. If you can do that in a
19 day, great.

20 MR. BENNETT: Well, hopefully we'll be in a position
21 to do that in a day. A lot has to happen to get from here to
22 there, however. Your Honor, again, we filed a disclosure
23 statement that has lots of blacklining. It is -- for the
24 most part, implements the settlements that Mr. Heiman
25 described. It does not affect a lot of classes. It does

1 significantly affect the retiree classes. We did get a few
2 comments over the weekend, and there were objections that
3 were filed with the Court. Let me address a few of them to
4 try to shorten the hearing because I think we can do that,
5 and then I think we need to hear from some people if there
6 are remaining comments and concerns.

7 First of all, there was an objection filed by FGIC.
8 Out in the hallway this morning, we reached an agreement that
9 will adopt most of their language. There are two exceptions.
10 First, there is a statement in the middle of the proposed
11 language that attributes to the city the view that they could
12 not -- that the city could not sell art free and clear of
13 liens. The city actually hasn't taken a position on that
14 subject. And in addition, the sentence is a little bit
15 simplistic because even if one could sell something free and
16 clear, that begs the question or leaves open the question of
17 what happens to the proceeds because the interests you're
18 selling free and clear of don't go away. They attach to the
19 proceeds. So we said we were taking that sentence out, and
20 that's acceptable to FGIC. In addition, at the very end of
21 the language -- the very end of the proposed language,
22 there's a description of the conditionality of the four
23 indications of interest that they collected. We've added
24 language to the end of it to point out that it's not just
25 conditioned on the completion of due diligence, it's

1 conditioned on the offerors being completely satisfied with
2 everything that they find and still being willing to go
3 forward. So with those two changes, we'll accept the FGIC
4 changes, and I think that objection is resolved.

5 Secondly, we received an informal communication from
6 the DWSD trustee with five suggestions, I think it was. The
7 last one was right. The suggestion of the language that I
8 agreed to before the hearing that we didn't get in we'll put
9 in. We just made a clerical error. But there are, I think,
10 a handful of other issues that the trustee for the DWSD debt
11 might want to raise where, quite frankly, we disagree with
12 the changes that they propose either because we believe they
13 are unnecessary or just not helpful.

14 And lastly, with respect to the UTGO settlement,
15 there is a statement in the plan that's -- excuse me -- in
16 the disclosure statement that says the settlement is subject
17 to approval under Bankruptcy Rule Section 9019. The UTGO
18 creditors want to clarify that that means subject to 9019 in
19 the context of the confirmation hearing and not separately,
20 and we will make that clarification at the end of that
21 sentence.

22 The only other filed objection I'm aware of is the
23 objection filed by Dechert on behalf of Macomb County, and
24 the disclosure statement is our -- my response to that is the
25 disclosure statement is our disclosure statement, and they

1 did not propose -- they said that they thought that some
2 parts of it were declarative statements that they thought
3 should be somehow softened to suggest that they were only the
4 city's position, but they did not propose where and they did
5 not propose specific changes, so I suppose we'll hear from
6 Mr. Brilliant or one of his colleagues on that, but otherwise
7 I think there may well be comments, but I think that deals
8 with the ones that are at least on file. And I'll respond
9 after the last --

10 THE COURT: Thank you, sir.

11 MR. BENNETT: Thank you, your Honor.

12 THE COURT: Who'd like to be heard, please?

13 MR. MARRIOTT: Good morning, your Honor. Vince
14 Marriott, Ballard Spahr, on behalf of EEPK and affiliates.
15 My understanding at the last hearing was that all of our
16 objections to the disclosure statement as it then existed
17 were overruled except for a request that we had that the
18 disclosure statement more fairly indicate what the likely
19 recoveries for unsecured creditors based on the B notes would
20 be. We don't have any new objections to the latest version
21 of the disclosure statement, and I think that the language
22 that the debtor has put in vis-a-vis the recovery values
23 based on B notes are reasonably close to what we believe them
24 in reality to be, close enough that we're not going to press
25 that objection any further, so as to the disclosure

1 statement, I guess I'm saying that I surrender, and -- but
2 not as to the plan.

3 And not to rain on today's parade, but I thought it
4 only fair to indicate that our view is that the settlements
5 that were reached with labor at large have probably
6 themselves rendered the plan in its current form
7 unconfirmable because it now creates a disparity in treatment
8 between similarly situated creditors, labor and other
9 unsecured creditors, that really can't be defended, and that
10 will be a large part of confirmation.

11 THE COURT: Okay. Thank you, sir. Would anyone
12 else --

13 MR. BRILLIANT: Your Honor, this is Allan Brilliant
14 on the phone on behalf of Macomb County. Is this a good time
15 for me to speak?

16 THE COURT: Go ahead, sir. Yes, absolutely.

17 MR. BRILLIANT: You know, for the record, Allan
18 Brilliant on behalf of Macomb County by and through its
19 county agency, Anthony V. Marrocco, the Macomb County Public
20 Works Commissioner. Thank you, your Honor, for allowing me
21 to appear by phone.

22 Overall, your Honor, we think the disclosure
23 statement is a much fairer and much better disclosure
24 statement than the previous drafts and only had, you know,
25 really one minor comment. And, you know -- you know, given,

1 you know, all that's occurred during the weekend and having
2 to reach our clients, we really didn't have an opportunity
3 over the weekend to propose language, but all we would
4 suggest, your Honor, is that on page 21 in the section where
5 it talks about GRS pension funding, in the second paragraph
6 in five below after the sentence, "As employees and retirees
7 of a City department, DWSD employees and retirees participate
8 in the GRS with other non-uniform city employees and
9 retirees," and then add the language, "It is the city's
10 position that," colon, and then, you know, just include the
11 next, you know, two paragraphs either indented or however
12 stylistically, you know, the debtors think is appropriate.
13 And then right before -- after the second paragraph and
14 before, you know, six, we would propose that language be
15 added that say, "Parties, including Macomb County, by and
16 through its county agency, Anthony V. Marrocco, the Macomb
17 County Public Works Commissioner, you know, may dispute and
18 contest such positions at the confirmation hearing, you know,
19 relating to such issues," and then just cross-reference the
20 risk factor that's at 14 and say, "See, you know -- you
21 know -- you know -- you know, IV.G." That's all we would
22 suggest, your Honor. We recognize it's the debtor's
23 disclosure statement, and this is their position, but we just
24 think fair disclosure would let parties know that at least at
25 this point in time there are parties that dispute their

1 rendition of the facts and -- you know, and maybe dispute it
2 at the confirmation hearing. And we did hear your Honor's
3 comments regarding the mediation, and, you know, hopefully
4 things can be resolved prior to the confirmation hearing, but
5 at this point in time when the disclosure statement goes out,
6 you know, we think a fair, you know, disclosure would, you
7 know, include the fact that parties may dispute these issues.

8 THE COURT: Thank you, sir. Would anyone else like
9 to be heard?

10 MR. LEMKE: Good morning, your Honor. David Lemke
11 on behalf of U.S. Bank as trustee for the water and sewer
12 bonds. Your Honor, I appreciate Mr. Bennett's comment. It
13 does resolve one of our continuing objections, and that is I
14 understand they will include the description we've provided
15 of the election. The waiver election, of course, like I
16 said, is contingent upon how you rule on the motion to strike
17 that.

18 We do have a couple of other items. We had not had
19 a chance to speak with debtor's counsel or city's counsel
20 since yesterday afternoon when we sent them our additional
21 comments, and so I didn't know until I heard Mr. Bennett say
22 so that none of the other comments that we made were being
23 accepted, so I will walk through those if that's the
24 appropriate thing to do, your Honor. So one of the things
25 we've asked for -- and it would be in addition to definition

1 number 207, which is the plan supplement definition, and this
2 is in the plan -- I'm walking through the plan right now --
3 is we did ask that they provide the -- as plan supplements
4 that they provide the new DWSD bond documents and the new
5 existing rate DWSD bond documents as a plan supplement within
6 30 days or no later than 30 days prior to the voting deadline
7 on the plan, and the reason for that, your Honor, is we would
8 like the -- we'd like to have our own opportunity -- we'd
9 certainly like the ad hoc committee to have a sufficient
10 opportunity but also have other holders have an adequate
11 opportunity to review the new DWSD plan documents. As the
12 debtor has said repeatedly in the plan and has said in open
13 court, they're not changing the bond documents except with
14 respect to interest in call protection and potentially this
15 argument over the funding of the GRS UAAL, but we would still
16 like to see those and have an opportunity to go through them
17 and make sure there aren't any substantial or substantive
18 material changes, so we're asking for that 30 days. And the
19 way you can -- we can fix that, I think, is if they just add
20 that as that a plan supplement or plan supplements containing
21 those new documents will be filed no later than 30 days prior
22 to the voting deadline in the definition of plan supplement.

23 The other place that we had a comment -- and this is
24 in the plan -- I'm on -- I'm just looking at the redline, so
25 I don't know how to reference, and I only attached the pages

1 that I'm concerned about. It's page 42 of the redlined plan.
2 The section is Section 9. I can't remember what the article
3 is right now, but it's insurance policies, and it's a
4 description of what happens to the city's insurance policies,
5 lower case. And we just simply ask that they add a sentence
6 in there in the plan description of the insurance policies
7 that is already in the disclosure statement, but we would
8 like that -- the plan and the disclosure statement to be
9 consistent in that regard. It's probably more important that
10 it be in the plan since that is the operative document, so
11 we're asking that the sentence be added in this subparagraph
12 9 that says, "For the avoidance of doubt, no Bond Insurance
13 Policies" -- and that's a defined term -- "shall be construed
14 as City insurance policies," period. "Nothing in this
15 Section or the Plan impairs, modifies, affects, or otherwise
16 alters the right of any party under any Bond Insurance
17 Policy," period. And, again, that's just language that's
18 already been agreed to in the disclosure statement, and we
19 would ask that it be also put in the plan.

20 We have a similar issue in the plan, and this is on
21 page 51 of the redline of the plan, and there's a Provision I
22 called cancellation of existing bonds and bond documents.
23 And, again, we are simply asking that language be inserted in
24 this description which is identical to what's in the
25 disclosure statement, but they're not identical right now.

1 The disclosure statement has some additional language in it
2 that we've all agreed to, and we're just asking that that
3 same additional language be moved over to this provision in
4 the plan as well, so it would insert -- it would match the
5 disclosure statement at page 71, and basically it just simply
6 references that nothing in the section that we're referring
7 to, nothing in Section III.D.7, Roman Numeral III.D.7 of the
8 plan, which is the release provision of the plan, or in any
9 other provision of the plan impairs, modifies, affects, or
10 otherwise alters the rights of bondholders and bond agents
11 with respect to claims under applicable bond insurance
12 policies or against the bond insurers.

13 We have a similar issue on page 55 of the redline of
14 the plan, your Honor. It is a subsection G, Limitations on
15 Amounts to be Distributed to Holders of Allowed Claims
16 Otherwise Insured, and in the disclosure statement -- they've
17 agreed to language in the disclosure statement on this exact
18 same provision that we just simply want them to include in
19 this one as well, and it's just a parenthetical. It says,
20 "Except for the immediately preceding sentence" -- well, let
21 me back up. It's the very last sentence of that section,
22 "For the avoidance of doubt, comma, except for the
23 immediately preceding sentence," which is what we want added,
24 comma, "this section shall not apply to Bond Insurance
25 Policies or Swap Insurance Policies." And, again, it's

1 already in the disclosure statement, but we would like it in
2 the plan as well, and that -- it is in the disclosure
3 statement already at page 74. And my references to page
4 numbers, again, are always to the redline, so -- then on page
5 57 of the plan there is a subsection 3 called Allocation of
6 Distributions. And this actually needs to be added to both
7 the disclosure statement, which is on page 76 of the
8 disclosure statement -- it says right now -- this section
9 says that all distributions to holders of allowed claims that
10 have components of principal and interest shall be deemed to
11 apply first to the principal amount of the claims and then to
12 interest. We think we're in agreement that that's not
13 applicable to the DWSD bonds. They're not doing anything to
14 change how those payments are applied under the bond
15 documents, so when interest payments come in, they get
16 applied to interest, and when principal payments come in,
17 they get applied to principal, so all we're asking is that
18 there simply be a proviso at the beginning of that section
19 that says, "except with respect to distributions on account
20 of DWSD bond claims," then all holders to distribution, so it
21 would follow just to make clear there's no confusion
22 somewhere down the road as to how those payments were
23 supposed to be applied.

24 Next on the plan, your Honor, and this is on page --
25 it's actually page 145 of 393 if you look at the docket

1 pages. It's a description. It's a summary of the principal
2 terms of the new DWSD bonds, and they have -- one, two,
3 three, four -- five columns that basically lay out the
4 principal, the interest rate, the maturity dates, the pre-
5 payment terms, and the other terms, and this is on the new
6 DWSD bonds. We've simply asked that they also add in here in
7 the description similar language that they have previously
8 about how accrued and unpaid interest will be paid on the new
9 bonds as of the distribution date. And so all we've simply
10 requested is that they either add it to one of these existing
11 boxes or they just create a new box that -- and I won't read
12 it. It's fairly long, but it just basically brings forward
13 that accrued and unpaid interest as of the distribution date
14 with respect to DWSD bonds will either be paid in cash on the
15 distribution date or will be added to the principal amount of
16 the new DWSD bonds, and so if they will do that, that would
17 be helpful so that the summary has everything we think that's
18 pertinent in it.

19 We have the same comment on the next page -- or it's
20 on page 147 of 393 in the plan. This is the summary
21 description of the new existing rate DWSD bonds, so we're
22 simply asking that that exact same language I just referenced
23 also be added to the summary of these -- of the description
24 here or the summary of these -- the new existing rate bonds.
25 So that's on the plan, your Honor.

1 We have some comments on the disclosure statement,
2 some of which I've already addressed, but if I could just go
3 through it quickly, we would like the disclosure statement to
4 also have a proviso that the plan supplement containing the
5 new DWSD bonds and the new existing rate DWSD bond documents
6 will be filed no later than 30 days prior to the voting
7 deadline. We had asked on page 31 of the disclosure
8 statement that they insert the attached election language,
9 which I now understand from Mr. Bennett's comments they will
10 add, so we appreciate that. We had asked that that also be
11 included on page 48 of the disclosure statement, again, the
12 redline, page 48.

13 And then in the disclosure statement on page 59 it
14 is in -- again, it's in the section regarding the insurance
15 policies. It's paragraph 9. It starts at the bottom of page
16 58 of the redline disclosure statement. It goes over to page
17 59. We simply ask that to be cleaned up to also be
18 consistent with the plan, and specifically there is a
19 sentence that says, "Nothing in this section or the plan,"
20 and it currently says "is intended to," but we had asked that
21 it be changed, and I thought they had agreed, so that now it
22 would say, "Nothing in this section or the plan impairs,
23 modifies, affects, or otherwise alters the right of any party
24 under any Bond Insurance Policy."

25 In page 71 of the disclosure statement, the redline,

1 there's a paragraph I, Cancellation of Existing Bonds and
2 Bond Documents. It's the exact same comment I made with
3 respect to the plan, so we just need those two provisions,
4 the one in the disclosure statement and the one in the plan,
5 to be identical, and it is with respect to that nothing in
6 this section of the plan -- nothing in Section Roman Numeral
7 III.D.7 of the plan or in any other provision of the plan
8 impairs any rights under the bond insurance policies.

9 Finally, your Honor, on the disclosure statement, it
10 is -- on page 76 of the redline, it is the same comment I had
11 with respect to the allocation of distributions. In other
12 words, we want to add at the beginning of that Subsection C
13 except with respect to distributions on account of DWSD bond
14 claims, then all distributions will be made principal first
15 and then interest, so we're just asking that that same change
16 be made in the disclosure statement.

17 And then the final comment I have -- and we did not
18 address this with the city in our written comments on Sunday.
19 I hadn't actually picked up on it until this morning, but we
20 just want to make clear -- and I did talk to one of the
21 city's counsel. I think we'll get this clarified, but I'll
22 say it on the record, and that is this interest that will
23 accrue prior to the distribution date on the new securities
24 is either going to be paid in cash or rolled into the
25 principal balance of the new securities, and that's fine. We

1 understand that that's the -- that's what they intend to do.
2 But if you looked at the definition of distributions and
3 distributions date, they contemplate there could be multiple
4 distribution dates, and we just wanted to make clear that
5 they won't continue to roll interest forward after the
6 initial new securities are issued. It will only be done one
7 time potentially, and that is interest that's accrued up to
8 that issuance date, and from thereafter it gets paid in
9 accordance with its terms. I've talked to counsel. He
10 assured me that that is not what was intended, but we will
11 work on just tweaking the language a little bit to make sure
12 there's no misunderstanding going forward.

13 So with that, your Honor, I think that's all the
14 comments I had to the plan and disclosure statement. I
15 appreciate it. Thank you.

16 THE COURT: Thank you.

17 MR. KOHN: Good morning, your Honor. Samuel Kohn of
18 Chadbourne & Parke on behalf of Assured Guaranty Municipal
19 Corp. Your Honor, I just want to state on the record that,
20 as Mr. Heiman said, the UTGO settlement is in documentation
21 form. Under the agreement, the plan and disclosure statement
22 are to be in form and substance approved by the UTGO -- by
23 the parties to the settlement. It's still the documentation
24 stage. There are some elements that we would have believed
25 should have been in the plan and disclosure statement, but if

1 it's going to be -- so if the settlement is not going to be
2 finalized or the documentation is not going to be finalized
3 before the solicitation, we just want to state on the record
4 there are a number of provisions such as limited releases,
5 exculpations, and post-confirmation jurisdiction provisions
6 which we believe are going to ultimately have to be in the
7 plan. Thank you, your Honor.

8 THE COURT: All right. Thank you.

9 MR. GORDON: Good morning, your Honor. Robert
10 Gordon on behalf of the Detroit Retirement Systems. Your
11 Honor, one concern we have is sort of a larger version of
12 what was just expressed by counsel for the UTGOs. Mr. Heiman
13 indicated that there is a settlement with not only the
14 retirement -- Retiree Committee but also with the pensions,
15 and that had been something that was reported in the papers a
16 few days ago. However, for various reasons, there are
17 certain issues that we're still tasked with ironing out,
18 including restorations, the concept of restoration of
19 benefits. You'll notice in the global settlement referenced
20 in the disclosure statement with respect to the Retiree
21 Committee, the committee has deferred to the retirement
22 systems to iron out the restoration piece, but obviously both
23 parties are concerned about that issue, so, as a result, the
24 settlement or the terms upon which we are in agreement
25 between the city and the pension systems is not yet in the

1 disclosure statement in full. There certainly is the global
2 settlement described with the Retiree Committee, but there
3 hasn't been a description of the settlement and all of its
4 terms with the pension systems, so that will obviously be
5 something that will be incorporated we hope in the coming
6 days between now and the target date of Friday to submit a
7 finalized version, but the document will change a bit, so I
8 wanted to alert the Court to that.

9 As Mr. Heiman also said, we've all been stretched a
10 bit, and so there are a few nits that I haven't had the
11 chance to discuss with Jones Day, and I apologize for that,
12 but hopefully, again, those things can be dealt with in the
13 coming days. For example, the disclosure statement still
14 talks about a return on investment assumption of that shall
15 not be higher than 6.75 percent. Well, it is 6.75 percent,
16 and it should reflect that. There's still references to
17 something called a variable annuity concept. That has gone
18 away in favor of what we're calling the restoration concept,
19 and there are things of that nature. There's also reference
20 to governance provisions and things that are still being
21 negotiated. So, your Honor, it may very well be that those
22 things will all be reflected in this document by Friday in a
23 way that we're all comfortable with, but I wanted to suggest
24 or ask the Court whether it was possible to have a status
25 conference on Friday to discuss where we are on these things

1 because they aren't in there yet, and we don't know what
2 they're going to look like.

3 There's another reason why I'm asking that question
4 as well, and, again, this is something that we haven't had a
5 chance to speak at length with counsel for the city about.
6 And I notice the concern of the Retiree Committee as well. I
7 won't put words in their mouth. I'll let them speak for
8 themselves, but I think we both had this concern. The
9 settlements that are being reached are settlements that
10 support what I would call Plan A, which is a plan where the
11 state contribution is made and the DIA settlement is
12 implemented and so forth. The settlements are not a
13 settlement that also would support, if those things don't
14 happen, the Plan B where all those monies do not come in. So
15 we're stuck in a strange place where we're being asked to
16 support ultimately the plan, Plan A, but there's a deadline
17 coming up to object to the plan, and if we otherwise don't
18 have some mechanism, we are going to be required to pursue a
19 parallel path where we would still be filing plan objections
20 as if Plan B is still in play. There are ways we could deal
21 with that. Perhaps we could submit a plan objection to
22 counsel for the city without filing it so they are not
23 blindsided. At some point at least they have it. There's
24 also issues about -- in this regard, your Honor, the vote
25 tabulation deadline is three days before trial, so neither

1 the Retiree Committee nor the pension systems will know
2 whether the beneficiaries have voted, which way they voted
3 and whether we actually have to have -- gear up for trial
4 because we won't know whether Plan A is being supported or
5 whether we're faced with a Plan B, again, so these are issues
6 that I would love to have the opportunity to discuss with the
7 Jones Day firm, and I think those are things we could do
8 between now and Friday. Again, I apologize that we haven't
9 ironed these things out before then. We've all been working
10 very hard on trying to achieve the settlements that have been
11 referenced by Mr. Heiman, but those are things that are still
12 out there for now.

13 THE COURT: Well, of course, the other contingency
14 is that the state legislature doesn't act on its piece of
15 this before confirmation. What strikes me as the appropriate
16 way to handle that, at least in part, is to say that if we
17 don't have that piece in place by that time, that any votes
18 that came in from retirees in favor of the plan will be
19 counted as "no" votes on the presumption that without that
20 they would not have voted in favor of the plan.

21 MR. GORDON: Right; right.

22 THE COURT: What do you think of that?

23 MR. GORDON: I think that that's a real issue. I
24 have not been dealing with the ballots themselves directly,
25 but my understanding is there's not a place on there to

1 check, yes, I vote for it if it's Plan A, and, no, I don't
2 vote for it if it's Plan B. It's just not in there, and I
3 could see that as being very confusing, so --

4 THE COURT: Well, under law they vote for the city's
5 plan --

6 MR. GORDON: Right.

7 THE COURT: -- not another plan.

8 MR. GORDON: That's right. That's right.

9 THE COURT: Anything further, sir?

10 MR. GORDON: No. Thank you, your Honor.

11 THE COURT: Would anyone else like to be heard
12 regarding the disclosure statement?

13 MS. CECCOTTI: Your Honor --

14 THE COURT: Yes, ma'am.

15 MS. CECCOTTI: Yes. Babette Ceccotti, Cohen, Weiss
16 & Simon, LLP, for the UAW, if this is an appropriate time. I
17 would like to express our concern as well to particularly the
18 last matter that Mr. Gordon raised. There is a place on your
19 scheduling order for supplemental objections, but I found
20 myself asking the same question similar to Mr. Gordon
21 regarding how -- whether that would be a sufficient mechanism
22 under the scheduling order, so we have the same concern
23 regarding the alternative A, alternative B issue.

24 THE COURT: Well, thank you. The supplemental
25 objection process was not really designed to deal with this

1 issue, so I think we are going to have to be creative somehow
2 to figure out how to deal with this issue.

3 MS. NEVILLE: Good morning, your Honor. Carole
4 Neville on behalf of the Retiree Committee. Your Honor,
5 we're not going to go through all the little changes that we
6 have, but we have agreed with Ms. Lennox and Mr. Bennett to
7 work to make the notice, the disclosure statement, and the
8 plan all jibe and to embody the agreement, and hopefully
9 we'll have a final agreement by Friday.

10 July 18th was the date that we had reserved for
11 supplemental objections based on the vote, so we have to take
12 a look at that one and the July 11th deadline, and then the
13 May 12th deadline is the first deadline for filing objections
14 to confirmation, so we intend to work with Mr. Bennett and
15 Ms. Lennox and Mr. Heiman about the proper dates.

16 THE COURT: Thank you. I appreciate that.

17 MR. PLECHA: Good morning, your Honor. Ryan Plecha,
18 Lippitt O'Keefe Gornbein, on behalf of the retiree
19 association parties. I just rise briefly to inform the Court
20 that the Retired Detroit Police and Fire Fighters Association
21 does have an executed term sheet, which does address
22 governance as well as restoration issues, so we would be
23 asked to be involved in the process on that going forward to
24 confirm that it complies with the term sheet that we do have
25 executed with the city. Thank you.

1 THE COURT: Thank you, sir. Anyone else either here
2 or on the phone? Apparently not. Mr. Bennett.

3 MR. BENNETT: Okay. Your Honor, let me try to
4 resolve as many of these as possible quickly. With respect
5 to the Macomb County comment, I think I'd like to propose to
6 deal with Mr. Brilliant's suggestion by accepting half of it.
7 And if your Honor has the marked version, the page reference
8 Mr. Brilliant gave you was to the clean version. On the
9 marked version, the place where he was seeking the insert is
10 at the bottom of page 23 to say that it's the city's
11 position, and then that would apply to all words following
12 "applicable" and the next paragraph. I think that's what
13 we'll do. I don't think we'll put in Macomb County's
14 position because there will be a hundred positions. Again,
15 this is the city's disclosure statement, and Macomb I don't
16 even think is a creditor, but we will say it's the city's
17 position. If Macomb has a different position, they can deal
18 with it in pleadings. If they want to send a letter to
19 people who are receiving the disclosure statement, they're
20 free to do so.

21 THE COURT: All right. The Court will sustain your
22 position on that and overrule the balance of Macomb County's
23 objection to the disclosure statement.

24 MR. BENNETT: Thank you, your Honor. With respect
25 to Mr. Lemke's changes, I freely concede that they all are

1 kind of minor, and they are, but I think the most important
2 point is is that he's seeking a whole bunch of plan changes.
3 And for better or for worse -- and I'm not going to go into
4 settlement communications, but the record in this case shows
5 that the city has progressively improved the treatment of
6 DWSD bondholders, been receptive to a vast array of comments
7 and suggestions from them and have incorporated them into the
8 plan, and we still haven't gotten to "yes," so what I would
9 say to Mr. Lemke is is that he didn't have any material
10 changes to the disclosure statement, so the disclosure
11 statement is, of course, adequate by definition. He would
12 like to plan -- say the plan different things, and I will say
13 to Mr. Lemke on the record because I can tell him what my
14 settlement position is is that if we ever make a deal, he can
15 have all the plan changes on these topics that he asked for,
16 but we don't have a deal, and we're kind of done changing the
17 plan, and this is a disclosure statement hearing, so I
18 would -- with respect to Mr. Lemke's comments to the plan, I
19 would refer them to the mediation session that is now
20 scheduled for Friday, but the disclosure statement is
21 adequate, and we would stand on what it says. With respect
22 to all of his comments, they are all covered very well in the
23 disclosure statement.

24 THE COURT: Well, let me just ask with regard to new
25 bond documents --

1 MR. BENNETT: Oh, that's a good point. We have said
2 in this courtroom also on the record -- I'll say it again
3 today -- there will be no changes other than the changes that
4 were described in the plan. Creating something like 300 sets
5 of documents contingent upon how this comes out strikes us as
6 a waste of money. The same means the same. See, I just said
7 it again on the record. And if it so happens that the plan
8 is confirmed in its current form between the time of the
9 confirmation and the effective date, these documents will be
10 generated. And if they're not the same, your Honor will have
11 to decide whether they're the same or not. And, frankly, I
12 don't think you're going to have any such disputes to deal
13 with because those will be very simple questions to deal
14 with.

15 THE COURT: Right. So the process that you foresee
16 is to give counsel an opportunity to review the bond
17 documents before they are actually issued so that he can
18 review them at that time?

19 MR. BENNETT: That's correct, your Honor.

20 THE COURT: With an opportunity to file a motion if
21 issues regarding whether they are the same can't be resolved?

22 MR. BENNETT: Which anyone would have if there was
23 any way the city was not implementing the plan in accordance
24 with the terms of the plan.

25 THE COURT: All right. With that understanding on

1 the record here, the Court will overrule the objections to
2 the disclosure statement and defer to plan confirmation the
3 objections to language in the plan itself, although, frankly,
4 I have to say that anything in the plan that clarifies intent
5 is welcome.

6 MR. BENNETT: I appreciate that, your Honor. With
7 respect to the comments of Mr. Gordon and the other retiree
8 representatives, a couple of different things. First of all,
9 it's understandable given that everyone had a busy weekend,
10 but the plan has in it what I will refer to as the AFSCME
11 solution because it's something that I worked out with AFSCME
12 and Ms. Levine, and it does provide that in the event what
13 are now defined as the initial funding conditions are not
14 met, "yes" votes become "no" votes with respect to
15 pensioners, so that is actually the solution that is in the
16 plan and in the disclosure statement, and it's fairly
17 prominent. I think when people go over it again, they'll see
18 it. Now, that does raise a -- the issue raised by the AFL's
19 lawyer, Ms. Ceccotti, on the phone, which is how we're going
20 to deal with the fact that we have what we believe is a deal
21 with virtually all, not quite all, of the retiree
22 representatives that's contingent on something -- a number of
23 things happening in the future. Clearly, the city would --
24 wants to save money and aggravation and would like not to be
25 dealing with an avalanche of hypothetical briefing, so -- and

1 I agree that your Honor's schedule was not contemplated for
2 this twist where there would be people who for all intents
3 and purposes had settled around the plan and would only
4 object if later on a whole bunch of things didn't happen and
5 the city was continuing on the road of trying to confirm that
6 plan as opposed to something different that would deal with
7 those changed developments. Your Honor, I think this would
8 benefit from additional discussion among the parties with a
9 view to trying to arrange something where people could really
10 put their pencils down on all of these contingencies until
11 the last possible moment, in which event there may have to be
12 lots of changes, including schedule changes, that would
13 result if we wind up in a situation where, frankly, right now
14 we don't contemplate and largely don't want to contemplate,
15 so let us work on that with all the relevant players and come
16 back to you with a proposal, but it's going to -- we're going
17 to try very hard to make it one that simplifies people's
18 lives as opposed to make it more complicated.

19 THE COURT: Well, as you're having those
20 discussions, I have an idea -- and, frankly, I don't know
21 where I got it from or even that it's a hundred percent
22 accurate -- that the state legislature will be in session
23 through May and then not again until later in August or
24 something like that.

25 MR. BENNETT: I'm not exactly sure, but I think Mr.

1 Howell knows the dates exactly, so may I surrender the podium
2 to him?

3 THE COURT: Um-hmm. If you have solid information
4 on that, that would be helpful.

5 MR. HOWELL: Good morning, your Honor. Steven G.
6 Howell, Dickinson Wright, special assistant attorney general
7 for the State of Michigan. My understanding is the
8 legislation -- legislature will be in session into
9 approximately mid-June --

10 THE COURT: Mid-June.

11 MR. HOWELL: -- and will be moving forward as
12 quickly as possible to get legislation introduced and passed
13 before the end of the session in June because, in fact, there
14 is then summer recess, and there will be elections this fall,
15 and I think the legislature comes back only for approximately
16 two weeks between then and the election date, so the goal is
17 to try to get all that done before the end of the --

18 THE COURT: Okay.

19 MR. HOWELL: -- June session.

20 THE COURT: So the question that we all have to
21 confront in our scheduling is what to do if we don't have
22 this legislation by that mid-June date.

23 MR. BENNETT: That's correct.

24 THE COURT: All right. Well, let me ask you -- I
25 will accept your offer to consult with other counsel and see

1 what creative solutions you can come up with to address that
2 contingency.

3 MR. BENNETT: Okay. I think that's it. I don't
4 think we require any additional rulings from your Honor. I
5 will be here, meaning in this building, on Friday, and so if
6 there is a need for a status conference, I'm sure I can
7 arrange to break from mediation to have one, but we will get
8 this document turned with the limited changes we've discussed
9 today and such additional clarifying comments that are worked
10 out mainly with the people that deals have been reached with,
11 and I appreciate your Honor's consideration.

12 THE COURT: I am not actually available on Friday.
13 I could be available on Monday, although it would be terribly
14 inconvenient. Let me ask you, Mr. Bennett, or you, Mr.
15 Heiman, to take the responsibility of notifying my office on
16 Friday whether a further status conference or hearing on this
17 is necessary, and then I'll take it from there on figuring
18 out how to address whatever issues there are that are left.

19 MR. BENNETT: Thank you, your Honor.

20 THE COURT: All right. So I look forward to what I
21 hope will be a final draft of the disclosure statement for my
22 review within the time I've set. Okay. Stand by one second.
23 I'm going to rule later on the open issue regarding the
24 balloting for the bond issue that you addressed earlier. In
25 the meantime, though, I want to turn our attention to what

1 objections to written discovery, either interrogatories or
2 requests for production, you'd like me to resolve at this
3 time.

4 MR. HACKNEY: Your Honor, good morning. Stephen
5 Hackney on behalf of Syncora. Perhaps I can give you a
6 little bit of a status of what's happened around what was
7 previously the April 25th deadline, and I'll alert you
8 perhaps, if I could, to certain issues out there about what
9 the deadline moves mean, but there are potentially two issues
10 that are up today. Your order says that you'll resolve all
11 objections today that have been filed by April 25th. The two
12 objections that I've seen are Syncora's objections and
13 responses to the city's document requests to us and to their
14 interrogatories to us. In addition, the state attorney
15 general has objected to one document request that Syncora
16 sent to the attorney general on the subject of the opinion
17 regarding the art. We weren't sure if your order is sort of
18 self-actualizing in the sense that if objections are filed,
19 we're going to stand up and argue them, so what we did is we
20 filed a motion on the AG point, which is --

21 THE COURT: It was my intent to resolve them here
22 today.

23 MR. HACKNEY: Chop wood. That's what I figured,
24 so -- and let me give you a status, if I could, also. We
25 have, I believe, resolved issues with Christie's about their

1 subpoena, so I don't anticipate motion practice there.

2 THE COURT: Okay.

3 MR. HACKNEY: We, with the help of the state -- and
4 there are a number of individuals we thanked in our motion --
5 issues two through six relating to revenue sharing and other
6 matters, I think we've worked that out. And then we've also
7 been working with counsel to the DIA and have gotten through
8 a number of thorny issues on that as well, so we're really
9 just down to this issue on the attorney general's opinion. I
10 was going to propose to start there. Then I was going to
11 talk more about Syncora's objections to the city's discovery
12 to us. Mr. Irwin and I have ongoing conversations about
13 that, and I will tell you it isn't clear necessarily that we
14 can't still resolve them, but I'll get to that in a moment.
15 I was going to start with the AG.

16 So, your Honor, you know, the art has been a sort of
17 noteworthy highly publicized part of the case, and from our
18 standpoint it's a really important part of the case because
19 what we've all been doing here both from the parochial
20 standpoint of just the creditor that you represent but also
21 someone who's part of this larger process is trying to figure
22 out how does Detroit deal with the challenges that it faces
23 and also give a reasonable recovery to creditors. And
24 there's been a lot of evidence and testimony already, I
25 think, in eligibility, and there will be, I'm sure, at

1 confirmation about Detroit's many challenges on the subject
2 of crime and blight and so on and so forth, and I know you're
3 familiar with that. But the city does have one very powerful
4 asset that does come from its, you know, more glorious
5 history when it wasn't in -- manufacturing powerhouse, and
6 that is this art collection, and so when you think about
7 something that could be transformative of the city and also
8 give creditors a substantial recovery, it is what is believed
9 to be a multi-billion dollar art collection sitting in the
10 center of the city.

11 Now, the city is proposing to address this issue
12 surrounding the art collection in a way that from our
13 standpoint yields far less value than could be gotten both
14 for the city and its creditors and obviously takes that value
15 and allocates it to one particular class of creditors, which
16 I would say is kind of a separate issue. Our philosophy on
17 this has been obviously we'll air to you our disagreements
18 with the way that's been handled, but from a process
19 standpoint, we think that we should have transparency around
20 the issues related to the value of the art, the provenance
21 and ownership of the art, and the attorney general's opinion,
22 kind of the three parts of the art story, so that the city's
23 creditors, its citizens, and the Court understand exactly
24 what decision is being made with respect to this art and why
25 it's being made, and that's why we've taken discovery of

1 Christie's and the DIA to learn about value and provenance,
2 and that's why we took -- submitted discovery to the attorney
3 general.

4 When you -- I don't know if you've had a chance to
5 review the privilege log, but if you look at the privilege
6 log -- okay. Well, this is kind of important, and let me
7 focus on what's in dispute. What the attorney general came
8 back to us and said was our production is the opinion and a
9 common interest agreement we have with the DIA and another
10 document -- a letter from the Senate majority leader
11 requesting the opinion, so they didn't produce documents, in
12 our view, that kind of go around or would have gone into the
13 opinion, led to its origination.

14 THE COURT: Let me just ask you to pause there and
15 tell me specifically what documents you want from them.

16 MR. HACKNEY: Yes, I will, your Honor. I appreciate
17 that. So if I could -- I thought we attached this to our
18 motion, but if we haven't, I would be happy to give you my
19 copy.

20 THE COURT: That would be the most convenient thing.

21 MR. HACKNEY: Yeah. If I can approach.

22 THE COURT: Sure. Thank you. Okay. Go ahead.

23 MR. HACKNEY: Your Honor, what you're holding there
24 is a privilege log, and the privilege log, I think,
25 identifies -- I think it's 14 communications, and the

1 communications are all, I think, e-mails, and they sometimes
2 have memoranda and other documents attached to them. But the
3 privilege log is very interesting because just to give you
4 some sense of kind of the timing here, if I'm not mistaken, I
5 believe Kevyn Orr was appointed in mid-March of 2013. The
6 first document on that log is from mid-April of 2013, and it
7 is a document that goes from Honigman Miller, the DIA's
8 counsel, to the attorney general, and it appears to attach a
9 memorandum that we don't know what it says but I'm going to
10 guess says here are a bunch of good reasons why the city
11 should not be allowed to sell the art. This is before
12 there's been a request for an opinion on this subject by the
13 Senate majority leader. It's at a time when Mr. Orr is just
14 getting on the job, and the DIA has already retained counsel
15 and is now working with the attorney general on a subject
16 that is going to have a huge implication for the city. It's
17 doing so at a time that it is operating under an operating
18 agreement with the city where it's the city's agent with
19 respect to the maintenance of the art collection. And one of
20 the provisions of that operating agreement says you, DIA, you
21 will not do anything to encumber our title to this art.
22 That's one of the promises that the DIA made in its operating
23 agreement with the city. So we would like to obtain these
24 communications between counsel for the DIA and the attorney
25 general to understand what was said and understand where the

1 attorney general's opinion came from, why it says what it
2 says, what went into what it says.

3 THE COURT: Well, but again let me ask you to pause
4 there with this more fundamental question. In court
5 proceedings like this, what weight does the law give to an
6 attorney general's opinion? Is it worth anything more or
7 less than a brief that the attorney general might write in
8 support of whatever the position is or in support of whatever
9 the issue is that's before the Court on the law, and isn't it
10 sufficient to protect your client's rights or interests to
11 have that brief and respond to that brief in the normal
12 course just like any other brief?

13 MR. HACKNEY: Yeah. You know, it's a very fair
14 question. I almost feel like posing it back to you since
15 you're the decider, but the -- but here's -- let me talk
16 about it a little bit.

17 THE COURT: If you do that, I will ask you to brief
18 that question.

19 MR. HACKNEY: Well, we --

20 THE COURT: I'm not familiar with attorney general
21 opinions. It's not anything I have any experience with, so I
22 don't know what value they --

23 MR. HACKNEY: Yeah.

24 THE COURT: -- the law says they are entitled to.
25 It feels like it's just another party in the case who came to

1 a conclusion, and the legal conclusion in it will be
2 evaluated --

3 MR. HACKNEY: Yeah.

4 THE COURT: -- along with all the other legal
5 conclusions of all the other briefs.

6 MR. HACKNEY: Well, this is what I would say about
7 that, your Honor. I think -- I was thinking about this as
8 well because there was kind of a question in my mind, which
9 is does the attorney general's opinion -- you know, it
10 embodies a bunch of legal concepts, and we have a bunch of
11 lawyers around here, more than you probably would want, but
12 we can argue -- we can argue the legal arguments back and
13 forth just as you suggest.

14 THE COURT: Right.

15 MR. HACKNEY: But I also suspect that what the city
16 will do is that they will actually introduce the opinion into
17 evidence and say this informs our business judgment, so to
18 speak, about how we've gone about dealing with this --
19 dealing with the art at large, and that's why what we're
20 doing in seeking the foundation and state support is really
21 the best under the circumstances, and it is in our best -- in
22 the best interest of creditors. And I think it is a little
23 bit like the 9019 hearing we had before you where I wasn't
24 sure whether you'll actually decide the provenance issues
25 with respect to the art or whether you will defer and allow

1 just evidence of dispute to come into the record and then use
2 that to inform your decision, but I have a suggestion for
3 you, which is these are very important questions. I
4 apologize. I don't have a definitive answer for you, but
5 this is just the discovery stage. And my recommendation and
6 our motion says let's get it all out there and have it, and
7 then however it plays out is how it plays out, but I think
8 the issue is significant enough that we would want as much
9 transparency as possible. And what our motion says that we
10 filed today -- I don't know if you've had a chance. We filed
11 it late on Friday, but what our motion says is there can't be
12 a common interest, which is the sole basis for withholding
13 these documents that the attorney general has declined to
14 produce. We've said there can't be a common interest between
15 the attorney general and the DIA because there certainly
16 isn't a common interest between the attorney general and the
17 city. They've taken nonidentical positions with respect to
18 what can be done with the art. The DIA is an agent of the
19 city. It is a contractor with the city via the operating
20 agreement that it performs under. It has a contractual duty
21 not to incumber the art. So we don't think there's a
22 sufficient similarity of interest between these parties even
23 though it's maybe counter-intuitive not to think that the DIA
24 doesn't have an interest in seeing the art not sold, but from
25 a legal standpoint we don't believe they can have a common

1 interest.

2 And, by the way, I would note that these
3 communications I've given to you, they're all from April and
4 May and June. The common interest agreement isn't signed
5 until December, long after. Now, common interest agreements
6 can have retroactive effect, but there isn't any evidence in
7 the record right now that this common interest to work
8 together on this important issue was struck back at the time
9 that the communications were actually happening. And that's
10 it on our motion. We think we should get these documents out
11 there and see them and understand them. Admittedly, they
12 will be subject to a lot of different types of issues like
13 the ones we just discussed about how this actually plays into
14 the case, and I will continue to give more thought to that.
15 That's my argument on the art, your Honor. I'd be happy to
16 cede the podium to Mr. O'Reilly, I know is here from the
17 Honigman firm, but I would like to get up and speak with you
18 again on the subject of our objections to the city's
19 discovery.

20 THE COURT: Okay.

21 MR. HACKNEY: Thank you, your Honor.

22 MR. O'REILLY: Good morning, your Honor. Arthur
23 O'Reilly from the Detroit Institute of Arts, which is, of
24 course, as you know, the nonprofit entity that has since 1885
25 managed and been a steward and a co-trustee of that entity.

1 The museum that exists today is commonly known as the Detroit
2 Institute of Arts, but it began as the Detroit Museum of
3 Arts.

4 The motion that Mr. Hackney filed was filed late on
5 Friday, 11 p.m. or so, and so we haven't had an opportunity
6 to respond or actually consider the arguments. And, frankly,
7 the Detroit Institute of Arts, at least, is a nonparty to
8 that motion. The subpoena was issued to the state attorney
9 general, who has a common interest and a common interest
10 agreement with the DIA, but in a three-party discussion the
11 DIA hasn't to date been part of the discussions that Mr.
12 Hackney has had with the state attorney general. Prior to
13 coming in today, I did mention to Mr. Hackney that I was
14 willing to talk over whether there's a resolution that made
15 sense under the circumstances that got him what he needed,
16 but given the pace of things and the short timeline in which
17 we've had to deal with these issues, we didn't reach any
18 resolution there today, and I don't know if he's currently
19 willing to go down that path, but I do think makes a lot of
20 sense. We, the Honigman firm, and the DIA have been working
21 with Mr. Hackney, I believe, pretty well in trying to create
22 the type of transparency that he's talked about on the
23 restrictions, on the valuation, and to the extent that
24 there's nonprivileged documents that might be provided to him
25 as part of this exchange, we'd be happy to work with him to

1 get those resolved. There are a lot of issues, I think, that
2 are deep within his motion that really can't be adequately
3 addressed in this type of weekend-type time frame. Among
4 other things, he mentioned that there's no record evidence of
5 whether or not there's a retroactive effect to this
6 agreement. Well, fine and good, but nobody at least to this
7 proceeding has had an opportunity to do that.

8 I would suggest, though, that your Honor -- and I'm
9 happy to answer any questions that you might have about this
10 or the motion as a whole, but I do suggest that it might make
11 sense for Mr. Hackney and we and the attorney general to sit
12 down to figure out if there's a pathway that makes some more
13 sense here, but if there are other questions that your Honor
14 has, I'm happy to address them. The state attorney general,
15 Mr. Restuccia, the assistant attorney general, is here as
16 well to address the motion.

17 THE COURT: Well, I guess my question for you would
18 be since the subpoena or the request for documents was issued
19 to the attorney general for documents in the attorney
20 general's control, do you have any standing? Does your
21 client have any --

22 MR. O'REILLY: Well, we have standing in the sense
23 that the attorney general has been attempting to protect and
24 comply with our common interest, and that's why he's here. I
25 was here because to the extent that we could work out an

1 agreement, it would make sense for the three parties, Mr.
2 Hackney, the state attorney general, and myself, to address
3 those issues.

4 THE COURT: All right.

5 MR. O'REILLY: However, at least in part, I would
6 think that if -- to the extent that we don't have standing in
7 terms of this motion that's been filed, I guess a procedural
8 mechanism would be for the DIA to actually file its own
9 motion for a protective order or some other remedy, but I
10 didn't think that your Honor really needed more motions or
11 more paper on the issue.

12 THE COURT: Well, does your client object to the
13 production of these documents and, if so, why?

14 MR. O'REILLY: Well, my client does object to the
15 production of some of them, at least, and --

16 THE COURT: Why?

17 MR. O'REILLY: Because, at least in part, there's a
18 common interest that the attorney general and the DIA have
19 and that we worked at least towards a portion of this
20 period --

21 THE COURT: All that tells me is that you have a
22 potential legal argument to object. I'm asking you why you
23 object.

24 MR. O'REILLY: Because they're privileged, your
25 Honor, at least in part.

1 THE COURT: Well, but you can waive the privilege.
2 Why do you object?

3 MR. O'REILLY: I'm sorry?

4 THE COURT: You can waive the privilege. I'm asking
5 you why you object. What's in it for you?

6 MR. O'REILLY: Well, and I object to at least the
7 production of some of them.

8 THE COURT: Why?

9 MR. O'REILLY: Some of them actually contain
10 internal communications that actually were inadvertently
11 given to the attorney general, so it shouldn't have had it in
12 the first place. They agreed to produce -- to destroy them
13 at the time, but for whatever reason that didn't happen. You
14 know that old story. So at least as to that -- and, frankly,
15 I don't know if Mr. Hackney has taken a position on that.

16 THE COURT: Can you identify which line item in this
17 privilege log that might be?

18 MR. O'REILLY: I believe it's Number 11 in the
19 privilege log. There's a note there that says inadvertent
20 production, and that piece, I believe, should not be part of
21 this record at all. Things happen, and I don't know --

22 THE COURT: All right.

23 MR. O'REILLY: -- that Mr. Hackney has taken a
24 position.

25 THE COURT: Thank you.

1 MR. O'REILLY: But at least as to some of the
2 documents and particularly attachments thereto, we would be
3 happy to look at them. Frankly, I haven't seen them in a
4 very long time, so I haven't been able to decide whether or
5 not there is a basis to say to Mr. Hackney these we'll be
6 willing to give to you. Thank you, your Honor.

7 MR. RESTUCCIA: Good morning, your Honor. Eric
8 Restuccia from the Attorney General's Office appearing on
9 behalf of Attorney General Bill Schuette. I should clarify
10 also that I'm appearing on behalf of him in his own name.
11 Obviously there have been assistant attorneys general who've
12 been representing the State of Michigan, but insofar as I
13 appear, it's on his behalf. The objection that the attorney
14 general filed was consistent with the common interest
15 agreement that was established with the attorneys for the
16 Detroit Institute of Art, and we wanted to honor that
17 agreement. That's the basis on which we had filed our
18 objections, although you did ask -- you kind of cut to the
19 heart of the question, what is the sensitive nature of the
20 communications with the Detroit Institute of Art. Our
21 objections when we filed were more -- were broader than just
22 these specific items because, of course, the internal --
23 because the subpoena requested all documents and
24 communications, and that would include the internal
25 communications between the attorneys themselves, and that

1 seems to me something that the attorney general would want.
2 I mean his deliberative process internally wouldn't make
3 sense. But with respect to the Detroit Institute of Art,
4 there were several items which really were internal or things
5 that were generated by the attorneys for the Detroit
6 Institute of Art, and so we wanted to honor the agreement to
7 protect things that they had generated internally. That was
8 the basis on which we had filed the privilege, but with
9 respect to the attorney general, these -- for its internal
10 communications, we think that the objection is important.
11 With respect to the communications with the Detroit Institute
12 of Art, I mean really in a way we want to ensure the Detroit
13 Institute of Art that we're acting consistent with this
14 agreement.

15 THE COURT: Do you have this agreement?

16 MR. RESTUCCIA: Yes, I do.

17 THE COURT: May I see it?

18 MR. RESTUCCIA: Yes.

19 THE COURT: Have you seen this, Mr. Hackney?

20 MR. HACKNEY: I have.

21 MR. RESTUCCIA: May I approach, your Honor?

22 THE COURT: Please. Thank you. And so what in here
23 suggests that it was intended to cover or did cover documents
24 provided before the execution of the agreement?

25 MR. RESTUCCIA: It's paragraph K that talks about

1 materials exchanged prior to the execution of the agreement,
2 and the basis of the -- I'm sorry. And then the basis of
3 then the objection is that the interests became allied at
4 which -- at the point in time at which the attorney general
5 concluded that the artwork for the city is held really in
6 trust for the interest of the people of Michigan, and at that
7 point the interests of the DIA and the attorney general were
8 then identical.

9 THE COURT: So the DIA, through counsel, went to the
10 attorney general and said, "We'd like to help you come to the
11 conclusion that this art is covered by a trust. Here's our
12 legal research." The attorney general reviewed that research
13 and presumably did some of his own or with the assistance of
14 staff, came to the same conclusion, and now asserts that
15 those previous documents provided are protected.

16 MR. RESTUCCIA: That's right. The question comes
17 then at what point in time the attorney general has reached
18 his conclusion. Obviously the information provided by the
19 Detroit Institute of Arts was then factual. Much of it is
20 factual, but there's also some legal analysis that was
21 provided, but the attorney general drew his own independent
22 conclusion on these questions.

23 THE COURT: Perhaps you can help me at least
24 preliminarily with my earlier question about what weight the
25 law gives to an attorney general's opinion.

1 MR. RESTUCCIA: Well, the status of Michigan law is
2 that it is binding on state agencies in the absence of a
3 controlling legal opinion. The attorney general in this
4 litigation has been -- has put forward his conclusion really
5 as a matter for the Court's consideration. In other words,
6 this is an opinion that he believes is the proper one about
7 its disposition, but for this Court ultimately, as for the
8 Michigan courts, it's considered persuasive authority.

9 THE COURT: All right. Let me return this to you.
10 Chris. Anything further, sir?

11 MR. RESTUCCIA: No, your Honor.

12 THE COURT: Mr. Hackney.

13 MR. HACKNEY: Just briefly, your Honor, I think the
14 problem is that when you begin communicating with somebody
15 and sharing privileged information with them, you have to
16 know that you have the common interest at the time in
17 addition to the fact that you have to strike the agreement.
18 You have to not only have the common interest, but you also
19 have to come to the agreement before you do the
20 communicating. What you can't do is send information that's
21 sensitive to someone that may be your adversary -- you don't
22 know because they haven't done their work yet -- and then
23 when it turns out great for you, then later say, "Ah, well,
24 retroactively, had we known you would get to that conclusion,
25 we would have had a common interest the whole time and,

1 therefore, we'll have our agreement go back in time." And
2 that's one thing that the cases are clear about is that you
3 have to have the common interest agreement before you engage
4 in the communications. I don't think the record supports
5 that here. And there is the separate problem that I don't
6 think that they can have a common interest agreement between
7 themselves even if they write down that they do because I
8 think they are differently situated with respect to the art,
9 and you -- under the Sixth Circuit, you have to have a common
10 legal interest, and so they haven't made that showing, so we
11 would ask for the production, your Honor.

12 I would also note -- I haven't asked them to log
13 internal communications between and among the attorneys
14 general, and I'm not moving on that basis. I'm focused on
15 these documents. We have also asked them to confirm that
16 there are no other communications because the communications
17 stop abruptly on June 13th, and we were at least curious as
18 to whether they really just stopped communicating for about
19 the last year right after the opinion, but that's subject to
20 cleanup from counsel, but even within the attachments you'll
21 see there are factual attachments here, answers to questions
22 that the attorney general poses, facts that are provided that
23 they're considering, so we think the best course is to get
24 this produced, get it out into the light.

25 THE COURT: All right. I'm going to take a ten-

1 minute recess and come back out with a decision on this.

2 THE CLERK: All rise.

3 THE COURT: So that'll be -- that's all right.
4 That'll be 11:35 we'll say.

5 THE CLERK: Court is in recess.

6 (Recess at 11:23 a.m., until 11:37 a.m.)

7 THE CLERK: All rise. Court is in session. Please
8 be seated. Recalling Case Number 13-53846, City of Detroit,
9 Michigan.

10 THE COURT: Syncora has requested an order requiring
11 the attorney general to produce the documents identified in
12 the attorney general's privilege log dated April 25th, 2014.
13 These documents reflect communications from counsel for the
14 Detroit Institute of Arts to the attorney general and
15 communications from the Attorney General's Office back to
16 counsel for the Detroit Institute of Arts. The time frame is
17 from April 12, 2013, through June 13, 2013. The basis of the
18 objection to the request for these documents is the common
19 interest privilege.

20 The Court concludes that the claim of privilege
21 should be overruled and that Syncora's request for an order
22 compelling the production of these documents should be
23 granted. Plainly, the extent to which the art held by the
24 Detroit Institute of Arts should be taken into account in
25 evaluating whether the city's plan meets the best interest

1 test of the Bankruptcy Code is a substantial issue in the
2 case, one that has not been pre-judged or determined by the
3 Court at all, and, of course, this ruling should not be
4 construed to suggest one way or the other how the Court will
5 or may rule on that substantive issue of confirmation.

6 The common interest privilege, however, requires a
7 common legal interest, and the Court is unpersuaded that at
8 the time these documents were exchanged there was any common
9 legal interest between the attorney general of the State of
10 Michigan and the Detroit Institute of Arts. The client on
11 whose behalf the Honigman firm produced these documents or
12 received them from the attorney general is the corporate
13 entity that maintains and manages the collection for the city
14 as a result of a contract with the city. Nothing in the
15 record to this point anyway, in any event, suggests that that
16 contract requires this entity to take a position one way or
17 the other on the issue on which the attorney general
18 expressed his opinion ultimately.

19 More fundamentally, the fact that parties align in
20 presenting their arguments to the Court does not by itself
21 mean that they have a common legal interest. Much more has
22 to be shown than that, and whatever that more is has not been
23 shown of record here. More than that, at the time these
24 documents were produced, the record now does establish that
25 the attorney general had no formal position on the issue.

1 That only manifest itself later after the attorney general
2 did come to a conclusion, and these documents were produced
3 before there was even an alignment of positions, so for all
4 these reasons, the claim of privilege is disallowed and
5 overruled, and the motion is granted.

6 Now, we do have this one little open issue about
7 whether one or more documents were inadvertently produced and
8 should have been destroyed. I'm going to trust counsel to
9 work all of that out. And I want to return your log to you,
10 sir.

11 MR. HACKNEY: Your Honor, just --

12 THE COURT: One second. Did you want to be heard,
13 sir?

14 ATTORNEY: Oh, no.

15 THE COURT: Okay.

16 ATTORNEY: Thank you, your Honor.

17 MR. HACKNEY: Your Honor, one last issue. I don't
18 want to take up your time with issues that actually aren't
19 live issues, but this is sufficiently important, I think, to
20 the schedule, I kind of want to explain why we did what we
21 did on filing our answers to discovery and interrogatories.
22 And I will skip to the end and say Mr. Irwin and I have hopes
23 yet that we can resolve these objections. We had two meets
24 and confer last week. We hope to do additional ones, and so
25 I don't anticipate --

1 THE COURT: When will you be doing those?

2 MR. HACKNEY: I think we're going to do one right
3 after court today and keep working through them, but we
4 need --

5 THE COURT: Well, I don't want to -- I don't want to
6 hear you if your preference is to try to work it out. If you
7 want me to rule, I'm prepared to rule on anything, but if
8 your preference is to try to work it out and reserve what yet
9 can't be resolved --

10 MR. HACKNEY: Yeah.

11 THE COURT: -- in the meantime for another day,
12 that's fine with me, too.

13 MR. HACKNEY: I would like to do that as well, but I
14 do want to see if I can address -- and I will, but I want to
15 ask you a question about your schedule because we were the
16 only party that filed our discovery answers on April 25th,
17 and I told the city that I was of the view that they had to
18 as well and that the May 6 date is now the date that you and
19 I had previously discussed about when you'll hope to complete
20 discovery. And I told them that because I said I want to get
21 their objections now so I can see what they're not going to
22 produce so we can spend this time period wrestling, as it
23 were, and bringing motions to you to compel production of any
24 documents they are objecting to, and I also want to get their
25 interrogatory responses. And when you and I had talked at

1 the last hearing that was part of a larger scheduling issue,
2 but we talked about the fact that it's hard to complete
3 discovery on the day that you provide your document
4 objections because if your objections are sustained, then,
5 yeah, maybe you'll be done, but if your objections are
6 overruled, then you have to go collect and produce those
7 documents. And I had thought that what you did was you moved
8 not the date to respond to written discovery requests but the
9 date to comply with them back.

10 THE COURT: No, no. That deadline is the deadline
11 to produce documents to which there is no objection or to
12 object to documents as to which there is an objection, my
13 thought being that I would schedule a prompt hearing on those
14 objections with the expectation that to the extent I
15 sustained -- well, to the extent that I overruled any
16 objections and, therefore, required the production of
17 documents, that would be done immediately.

18 MR. HACKNEY: Okay.

19 THE COURT: That's how I want to proceed.

20 MR. HACKNEY: Okay. Well, that's helpful then. I
21 did not understand that, but we did get ours out early and
22 on -- you know, what we thought was on time, and we'll
23 continue to work through them. And if we can't, we'll
24 probably be before you on the 12th with respect to those,
25 which is --

1 THE COURT: All right. All right.

2 MR. HACKNEY: Thank you, your Honor.

3 THE COURT: All right. Would anyone else like to be
4 heard regarding any interrogatory objections or document
5 production objections? No? Yes? Maybe?

6 MR. IRWIN: Your Honor, Geoff Irwin. Mr. Hackney's
7 recitation is consistent with our discussions. That's all
8 I --

9 THE COURT: All right.

10 MR. IRWIN: -- really need to add at this point.

11 THE COURT: Okay. All right. On the schedule for
12 today we have this corrected motion 3932, motion for entry of
13 order establishing supplemental procedures for solicitation
14 and tabulation of votes regarding pension and OPEB claims.
15 Has that been resolved?

16 MS. LENNOX: I do think it's largely been -- oh, for
17 the record, your Honor, Heather Lennox of Jones Day on behalf
18 of the city. I do think this has largely been resolved. As
19 I indicated last time, we've been working with the Retiree
20 Committee, the two systems, AFSCME, public safety unions and
21 others, on the language. I believe that the parties have
22 reached agreement on these forms of documents in large
23 measure. As Ms. Neville indicated, we're going to take the
24 next couple of days, do a clean read, these against the plan
25 against the disclosure statement, just to make sure

1 everything is perfectly consistent, so they may change in
2 nonmaterial ways, but I believe this is done.

3 I also want to note -- we didn't say it last time,
4 but there's a notation on the ballots that the numbers on the
5 ballots are estimates. Only the retirement systems
6 themselves can determine final pensions, and the calculations
7 are being done by two different actuaries to give to the
8 balloting agents. The actuaries are working very closely
9 together. The data is very similar, but there may be minor
10 changes, and so that's why I just wanted to point out to the
11 Court that these are estimates that'll be on the ballots.

12 THE COURT: Okay.

13 MS. LENNOX: Other than that, I do think that,
14 barring somebody contradicting me, we have reached agreement
15 on these documents.

16 THE COURT: All right. We'll note this matter as
17 resolved. If you need my help with anything, you can let my
18 office know, and we'll get on the phone and figure something
19 out.

20 MS. LENNOX: Thank you, your Honor.

21 THE COURT: All right. Stand by, please. All
22 right. Mr. Gordon, something further?

23 MR. GORDON: Thank you, your Honor. I just wanted
24 to add in response to what Ms. Lennox just reported that my
25 comments from earlier still apply obviously. We're still,

1 you know, finalizing the terms of the settlement with the
2 retirement systems, so that could affect something in her
3 documents, but I don't know at this time.

4 THE COURT: All right.

5 MR. GORDON: Thank you.

6 THE COURT: All right. I want to turn my attention
7 then to my ruling regarding the joint motion to amend the
8 solicitation procedures order that was filed by Assured and
9 others. This ruling is going to be a little bit rough.
10 Somehow I got it in my head that this matter would be
11 resolved. Apparently it has not. Is that correct?

12 MR. KOHN: Correct, your Honor.

13 THE COURT: So I'll do the best I can here. As I
14 understand the plan provision at issue in the broadest terms,
15 it says something like this. On the ballot, these
16 bondholders will be given two choices to make. One is
17 whether to vote for or against the plan, and the other is to
18 make a certain election, an election which the city, at
19 least, contends provides the creditors concerned here better
20 treatment. The plan further provides that a party making
21 this election waives any and all objections that that party
22 might have to the plan, and that waiver applies not only as
23 to plan treatment in the class as to which the election is
24 made but also as to plan treatment that that same creditor
25 might have in classes in which the election is not made. It

1 is my further understanding that under the plan, if the class
2 accepts the plan, the creditors in the class who made the
3 election get the election, but if the class does not accept
4 the plan, the creditors in the class do not get the election.
5 And a consequence of that is that a creditor who has made the
6 election but doesn't get it because the class didn't accept
7 the plan is construed as having objected to the plan -- is
8 construed as having waived objections to the plan. In
9 response to that, Mr. Bennett, on behalf of the city, offered
10 then to allow such a creditor who otherwise would have lost
11 the right to object because he or she accepted the -- or
12 because he or she made the election but they didn't get the
13 election because the class did not accept the plan then to
14 object. And now I want to pause and ask Mr. Bennett if I've
15 got that substantially correct.

16 MR. BENNETT: Your Honor, you have it exactly
17 correct.

18 THE COURT: All right. All right. Well, then I am
19 going to sustain Assured's objection to that for the
20 following reason. And at this point I will preliminarily say
21 that the cases that the parties have cited on both sides I
22 didn't find particularly helpful because none of them dealt
23 with this precise kind of treatment with elections and
24 waivers, and certainly as a general matter the case law
25 supports the proposition that it is not coercive or at least

1 not unlawfully coercive for a plan to offer better treatment
2 to a party that accepts it. The problem with this is
3 actually mostly administrative. The administrative problem
4 is that it forces the creditor who makes the election to,
5 nevertheless, file an objection because of the possibility
6 that the plan may -- the class may not accept the plan, and
7 the creditor is under a deadline to file an objection. In
8 the alternative, the Court could extend the objection
9 deadline for those people, but we won't know that until the
10 end of the voting time, and that has the substantial
11 likelihood of delaying our confirmation process, and that's
12 unacceptable. So because of the inherent inefficiency that
13 this imposes upon creditors or the inherent inefficiency that
14 it imposes upon the Court and its process, the Court will not
15 permit it and will leave it to the city and these creditors
16 to try to work out some alternative that accomplishes what
17 the city wants to accomplish, which is to get votes, that
18 does not impose unduly on the efficiency of this Court's
19 process. I'm not sure that the language that the bondholders
20 have requested the Court to impose is the only -- or the only
21 necessary solution to that, so I'm going to ask you all to
22 try to work that out. Are you willing to try to do that?

23 MR. LEMKE: Yes, your Honor.

24 THE COURT: Mr. Bennett?

25 MR. BENNETT: Yes, your Honor.

1 THE COURT: All right. So when you do that, you may
2 submit an order, sir, that comports with your agreement and
3 the Court's ruling. Okay? Okay. Good. All right.
4 Anything else for today? All right. We'll be in recess.

5 THE CLERK: All rise.

6 (Proceedings concluded at 11:56 a.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

May 1, 2014

Lois Garrett